

REFERENCE TITLE: planning and zoning; utility corridors

State of Arizona  
House of Representatives  
Forty-seventh Legislature  
Second Regular Session  
2006

# HB 2080

Introduced by  
Representative Robson

AN ACT

AMENDING SECTIONS 9-461.05, 11-821, 32-2181.02 AND 32-2183, ARIZONA REVISED  
STATUTES; RELATING TO PLANNING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 9-461.05, Arizona Revised Statutes, is amended to  
3 read:

4 9-461.05. General plans; authority; scope

5 A. Each planning agency shall prepare and the governing body of each  
6 municipality shall adopt a comprehensive, long-range general plan for the  
7 development of the municipality. The planning agency shall coordinate the  
8 production of its general plan with the creation of the state land department  
9 conceptual land use plans under title 37, chapter 2, article 5.1 and shall  
10 cooperate with the state land department regarding integrating the conceptual  
11 state land use plans into the municipality's general land use plan. The  
12 general plan shall include provisions that identify changes or modifications  
13 to the plan that constitute amendments and major amendments. The plan shall  
14 be adopted and readopted in the manner prescribed by section 9-461.06.

15 B. The general plan shall be so prepared that all or individual  
16 elements of it may be adopted by the governing body and that it may be made  
17 applicable to all or part of the territory of the municipality.

18 C. The general plan shall consist of a statement of community goals  
19 and development policies. It shall include maps, any necessary diagrams and  
20 text setting forth objectives, principles, standards and plan proposals. The  
21 plan shall include the following elements:

22 1. A land use element that:

23 (a) Designates the proposed general distribution and location and  
24 extent of such uses of the land for housing, business, industry, agriculture,  
25 recreation, education, public buildings and grounds, open space and other  
26 categories of public and private uses of land as may be appropriate to the  
27 municipality.

28 (b) Includes a statement of the standards of population density and  
29 building intensity recommended for the various land use categories covered by  
30 the plan.

31 (c) Identifies specific programs and policies that the municipality  
32 may use to promote infill or compact form development activity and locations  
33 where those development patterns should be encouraged.

34 (d) Includes consideration of air quality and access to incident solar  
35 energy for all general categories of land use.

36 (e) Includes policies that address maintaining a broad variety of land  
37 uses including the range of uses existing in the municipality when the plan  
38 is adopted, readopted or amended.

39 (f) For cities and towns with territory in the vicinity of a military  
40 airport or ancillary military facility as defined in section 28-8461,  
41 includes consideration of military airport or ancillary military facility  
42 operations. On or before December 31, 2005, if a city or town includes land  
43 in a high noise or accident potential zone as defined in section 28-8461, the  
44 city or town shall identify the boundaries of the high noise or accident  
45 potential zone in its general plan for purposes of planning land uses in the

1 high noise or accident potential zone that are compatible with the operation  
2 of the military airport or ancillary military facility pursuant to section  
3 28-8481, subsection J.

4 2. A circulation element consisting of the general location and extent  
5 of existing and proposed freeways, arterial and collector streets, bicycle  
6 routes and any other modes of transportation as may be appropriate, all  
7 correlated with the land use element of the plan.

8 3. A PUBLIC UTILITIES ELEMENT SHOWING GENERAL PLANS FOR RIGHTS-OF-WAY,  
9 EASEMENTS AND CORRIDORS FOR LOCAL UTILITIES AND PUBLIC UTILITIES. THE CITY  
10 OR TOWN SHALL DEVELOP THIS ELEMENT IN CONJUNCTION WITH AFFECTED UTILITY  
11 COMPANIES. THIS ELEMENT SHALL BE CONSISTENT WITH TERMINOLOGY, USAGE AND  
12 DEFINITIONS PRESCRIBED BY THE CORPORATION COMMISSION.

13 D. For cities and towns having a population of more than two thousand  
14 five hundred persons but less than ten thousand persons and whose population  
15 growth rate exceeded an average of two per cent per year for the ten year  
16 period before the most recent United States decennial census and for cities  
17 and towns having a population of ten thousand or more persons according to  
18 the most recent United States decennial census, the general plan shall  
19 include, and for other cities and towns the general plan may include:

20 1. An open space element that includes:

21 (a) A comprehensive inventory of open space areas, recreational  
22 resources and designations of access points to open space areas and  
23 resources.

24 (b) An analysis of forecasted needs, policies for managing and  
25 protecting open space areas and resources and implementation strategies to  
26 acquire additional open space areas and further establish recreational  
27 resources.

28 (c) Policies and implementation strategies designed to promote a  
29 regional system of integrated open space and recreational resources and a  
30 consideration of any existing regional open space plans.

31 2. A growth area element, specifically identifying those areas, if  
32 any, that are particularly suitable for planned multimodal transportation and  
33 infrastructure expansion and improvements designed to support a planned  
34 concentration of a variety of uses, such as residential, office, commercial,  
35 tourism and industrial uses. This element shall include policies and  
36 implementation strategies that are designed to:

37 (a) Make automobile, transit and other multimodal circulation more  
38 efficient, make infrastructure expansion more economical and provide for a  
39 rational pattern of land development.

40 (b) Conserve significant natural resources and open space areas in the  
41 growth area and coordinate their location to similar areas outside the growth  
42 area's boundaries.

43 (c) Promote the public and private construction of timely and  
44 financially sound infrastructure expansion through the use of infrastructure  
45 funding and financing planning that is coordinated with development activity.

3. An environmental planning element that contains analyses, policies and strategies to address anticipated effects, if any, of plan elements on air quality, water quality and natural resources associated with proposed development under the general plan. The policies and strategies to be developed under this element shall be designed to have community-wide applicability and shall not require the production of an additional environmental impact statement or similar analysis beyond the requirements of state and federal law.

4. A cost of development element that identifies policies and strategies that the municipality will use to require development to pay its fair share toward the cost of additional public service needs generated by new development, with appropriate exceptions when in the public interest. This element shall include:

(a) A component that identifies various mechanisms that are allowed by law and that can be used to fund and finance additional public services necessary to serve the development, including bonding, special taxing districts, development fees, in lieu fees, facility construction, dedications and service privatization.

(b) A component that identifies policies to ensure that any mechanisms that are adopted by the municipality under this element result in a beneficial use to the development, bear a reasonable relationship to the burden imposed on the municipality to provide additional necessary public services to the development and otherwise are imposed according to law.

5. A water resources element that addresses:

(a) The known legally and physically available surface water, groundwater and effluent supplies.

(b) The demand for water that will result from future growth projected in the general plan, added to existing uses.

(c) An analysis of how the demand for water that will result from future growth projected in the general plan will be served by the water supplies identified in subdivision (a) of this paragraph or a plan to obtain additional necessary water supplies.

E. The general plan shall include for cities of fifty thousand persons or more and may include for cities of less than fifty thousand persons the following elements or any part or phase of the following elements:

1. A conservation element for the conservation, development and utilization of natural resources, including forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals and other natural resources. The conservation element may also cover:

(a) The reclamation of land.

(b) Flood control.

(c) Prevention and control of the pollution of streams and other waters.

(d) Regulation of the use of land in stream channels and other areas required for the accomplishment of the conservation plan.

1 (e) Prevention, control and correction of the erosion of soils,  
2 beaches and shores.

3 (f) Protection of watersheds.

4 2. A recreation element showing a comprehensive system of areas and  
5 public sites for recreation, including the following and, if practicable,  
6 their locations and proposed development:

7 (a) Natural reservations.

8 (b) Parks.

9 (c) Parkways and scenic drives.

10 (d) Beaches.

11 (e) Playgrounds and playfields.

12 (f) Open space.

13 (g) Bicycle routes.

14 (h) Other recreation areas.

15 3. The circulation element provided for in subsection C, paragraph 2  
16 of this section shall also include for cities of fifty thousand persons or  
17 more and may include for cities of less than fifty thousand persons  
18 recommendations concerning parking facilities, building setback requirements  
19 and the delineations of such systems on the land, a system of street naming  
20 and house and building numbering and other matters as may be related to the  
21 improvement of circulation of traffic. The circulation element may also  
22 include:

23 (a) A transportation element showing a comprehensive transportation  
24 system, including locations of rights-of-way, terminals, viaducts and grade  
25 separations. This element of the plan may also include port, harbor,  
26 aviation and related facilities.

27 (b) A transit element showing a proposed system of rail or transit  
28 lines or other mode of transportation as may be appropriate.

29 4. A public services and facilities element showing general plans for  
30 police, fire, emergency services, sewage, refuse disposal, drainage, ~~local~~  
31 ~~utilities~~, rights-of-way, easements and facilities for them.

32 5. A public buildings element showing locations of civic and community  
33 centers, public schools, libraries, police and fire stations and other public  
34 buildings.

35 6. A housing element consisting of standards and programs for the  
36 elimination of substandard dwelling conditions, for the improvement of  
37 housing quality, variety and affordability and for provision of adequate  
38 sites for housing. This element shall contain an identification and analysis  
39 of existing and forecasted housing needs. This element shall be designed to  
40 make equal provision for the housing needs of all segments of the community  
41 regardless of race, color, creed or economic level.

42 7. A conservation, rehabilitation and redevelopment element consisting  
43 of plans and programs for:

1 (a) The elimination of slums and blighted areas.  
2 (b) Community redevelopment, including housing sites, business and  
3 industrial sites and public building sites.  
4 (c) Neighborhood preservation and revitalization.  
5 (d) Other purposes authorized by law.  
6 8. A safety element for the protection of the community from natural  
7 and artificial hazards including features necessary for such protection as  
8 evacuation routes, peak load water supply requirements, minimum road widths  
9 according to function, clearances around structures and geologic hazard  
10 mapping in areas of known geologic hazards.  
11 9. A bicycling element consisting of proposed bicycle facilities such  
12 as bicycle routes, bicycle parking areas and designated bicycle street  
13 crossing areas.  
14 F. The water resources element of the general plan does not require:  
15 1. New independent hydrogeologic studies.  
16 2. The city or town to be a water service provider.  
17 G. The land use element of a general plan of a city with a population  
18 of more than one million persons shall include protections from encroaching  
19 development for any shooting range that is owned by this state and that is  
20 located within or adjacent to the exterior municipal boundaries on or before  
21 January 1, 2004. The general plan shall establish land use categories within  
22 at least one-half mile from the exterior boundaries of the shooting range  
23 that are consistent with the continued existence of the shooting range and  
24 that exclude incompatible uses such as residences, schools, hotels, motels,  
25 hospitals or churches except that land zoned to permit these incompatible  
26 uses on ~~the effective date of this amendment to this section~~ AUGUST 25, 2004  
27 are exempt from this exclusion. For the purposes of this subsection,  
28 "shooting range" means a permanently located and improved area that is  
29 designed and operated for the use of rifles, shotguns, pistols, silhouettes,  
30 skeet, trap, black powder or any other similar sport shooting in an outdoor  
31 environment. Shooting range does not include:  
32 1. Any area for the exclusive use of archery or air guns.  
33 2. An enclosed indoor facility that is designed to offer a totally  
34 controlled shooting environment and that includes impenetrable walls, floor  
35 and ceiling, adequate ventilation, lighting systems and acoustical treatment  
36 for sound attenuation suitable for the range's approved use.  
37 3. A national guard facility located in a city or town with a  
38 population of more than one million persons.  
39 4. A facility that was not owned by this state before January 1, 2002.  
40 H. The policies and strategies to be developed under these elements  
41 shall be designed to have community-wide applicability and this section does  
42 not authorize the imposition of dedications, exactions, fees or other  
43 requirements that are not otherwise authorized by law.

1           Sec. 2. Section 11-821, Arizona Revised Statutes, is amended to read:

2           11-821. County plan; definitions

3           A. The commission shall formulate and the board of supervisors shall  
4 adopt or readopt a comprehensive long-term county plan for the development of  
5 the area of jurisdiction in the manner prescribed by this article. The  
6 planning commission shall coordinate the production of the county plan with  
7 the creation of the conceptual state land use plans under title 37, chapter  
8 2, article 5.1. The county plan, with the accompanying maps, plats, charts  
9 and descriptive matter, shall show the commission's recommendations for the  
10 development of the area of jurisdiction together with the general zoning  
11 regulations. The county plan shall be made with the general purpose of  
12 guiding and accomplishing a coordinated, adjusted and harmonious development  
13 of the area of jurisdiction. In the preparation of the county plan the  
14 commission shall make surveys and studies of the present conditions and  
15 prospective future growth of the area of the jurisdiction. The planning  
16 commission shall cooperate with the state land department regarding  
17 integrating the conceptual state land use plans into the county plan. The  
18 county plan shall include provisions that identify changes or modifications  
19 that constitute amendments and major amendments to the plan.

20           B. In addition to the other matters that are required or authorized  
21 under this section and article 1 of this chapter, the county plan:

22           1. Shall provide for zoning, shall show the zoning districts  
23 designated as appropriate for various classes of residential, business and  
24 industrial uses and shall provide for the establishment of setback lines and  
25 other plans providing for adequate light, air and parking facilities and for  
26 expediting traffic within the districts.

27           2. May establish the percentage of a lot or parcel which may be  
28 covered by buildings, and the size of yards, courts and other open spaces.

29           3. Shall consider access to incident solar energy.

30           4. May provide for retirement community zoning districts.

31           5. May provide for the regulation and use of business licenses, adult  
32 oriented business manager permits and adult service provider permits in  
33 conjunction with the establishment or operation of adult oriented businesses  
34 and facilities, including adult arcades, adult bookstores or video stores,  
35 cabarets, adult live entertainment establishments, adult motion picture  
36 theaters, adult theaters, massage establishments and nude model  
37 studios. With respect to cabarets, the plan shall not conflict with specific  
38 statutory or valid regulatory requirements applicable to persons licensed to  
39 dispense alcoholic beverages, but the plan may include regulation of the age  
40 and conduct of erotic entertainers in a manner at least as restrictive as  
41 rules adopted under title 4.

42           6. SHALL INCLUDE GENERAL PLANS FOR RIGHTS-OF-WAY, EASEMENTS AND  
43 CORRIDORS FOR LOCAL UTILITIES AND PUBLIC UTILITIES. THE COUNTY SHALL DEVELOP  
44 THIS ELEMENT IN CONJUNCTION WITH AFFECTED UTILITY COMPANIES. THIS ELEMENT

1 SHALL BE CONSISTENT WITH TERMINOLOGY, USAGE AND DEFINITIONS PRESCRIBED BY THE  
2 CORPORATION COMMISSION.

3 C. In addition to the other matters that are required or authorized  
4 under this section and article 1 of this chapter, for counties having a  
5 population of more than one hundred twenty-five thousand persons according to  
6 the most recent United States decennial census, the county plan shall  
7 include, and for other counties the county plan may include:

8 1. Planning for land use that designates the proposed general  
9 distribution and location and extent of uses of the land for housing,  
10 business, industry, agriculture, recreation, education, public buildings and  
11 grounds, open space and other categories of public and private uses of land  
12 appropriate to the county. The land use plan shall include:

13 (a) A statement of the standards of population density and building  
14 intensity recommended for the various land use categories covered by the  
15 plan.

16 (b) Specific programs and policies that the county may use to promote  
17 compact form development activity and locations where those development  
18 patterns should be encouraged.

19 (c) Consideration of air quality and access to incident solar energy  
20 for all general categories of land use.

21 (d) Policies that address maintaining a broad variety of land uses  
22 including the range of uses existing in the county at the time the plan is  
23 adopted, readopted or amended.

24 2. Planning for circulation consisting of the general location and  
25 extent of existing and proposed freeways, arterial and collector streets,  
26 bicycle routes and any other modes of transportation as may be appropriate,  
27 all correlated with the land use plan under paragraph 1 of this subsection.

28 3. Planning for water resources that addresses:

29 (a) The known legally and physically available surface water,  
30 groundwater and effluent supplies.

31 (b) The demand for water that will result from future growth projected  
32 in the county plan, added to existing uses.

33 (c) An analysis of how the demand for water that will result from  
34 future growth projected in the comprehensive plan will be served by the water  
35 supplies identified in subdivision (a) of this paragraph or a plan to obtain  
36 additional necessary water supplies.

37 D. In addition to the other matters that are required or authorized  
38 under this section and article 1 of this chapter, for counties having a  
39 population of more than two hundred thousand persons according to the most  
40 recent United States decennial census, the county plan shall include, and for  
41 other counties the county plan may include:

42 1. Planning for open space acquisition and preservation. The open  
43 space plan shall include:



1 (a) A comprehensive inventory of open space areas, recreational  
2 resources and designations of access points to open space areas and  
3 resources.

4 (b) An analysis of forecasted needs, policies for managing and  
5 protecting open space areas and resources and implementation strategies to  
6 acquire additional open space areas and further establish recreational  
7 resources.

8 (c) Policies and implementation strategies designed to promote a  
9 regional system of integrated open space and recreational resources and a  
10 consideration of any existing regional open space plan.

11 2. Planning for growth areas, specifically identifying those areas, if  
12 any, that are particularly suitable for planned multimodal transportation and  
13 infrastructure expansion and improvements designed to support a planned  
14 concentration of a variety of uses, such as residential, office, commercial,  
15 tourism and industrial uses. The mixed use planning shall include policies  
16 and implementation strategies that are designed to:

17 (a) Make automobile, transit and other multimodal circulation more  
18 efficient, make infrastructure expansion more economical and provide for a  
19 rational pattern of land development.

20 (b) Conserve significant natural resources and open areas in the  
21 growth area and coordinate their location to similar areas outside the growth  
22 area's boundaries.

23 (c) Promote the public and private construction of timely and  
24 financially sound infrastructure expansion through the use of infrastructure  
25 funding and financing planning that is coordinated with development activity.

26 3. An environmental planning element that contains ~~analysis~~ ANALYSES,  
27 policies and strategies to address anticipated effects, if any, of plan  
28 elements on air quality, water quality and natural resources associated with  
29 proposed development under the comprehensive plan. The policies and  
30 strategies to be developed under this element shall be designed to have  
31 countywide applicability and shall not require the production of an  
32 additional environmental impact statement or similar analysis beyond the  
33 requirements of state and federal law.

34 4. A cost of development element that identifies policies and  
35 strategies that the county will use to require development to pay its fair  
36 share toward the cost of additional public facility needs generated by new  
37 development, with appropriate exceptions when in the public interest. This  
38 element shall include:

39 (a) A component that identifies various mechanisms that are allowed by  
40 law and that can be used to fund and finance additional public services  
41 necessary to serve the development, including bonding, special taxing  
42 districts, development fees, in lieu fees and facility construction,  
43 dedications and privatization.

44 (b) A component that identifies policies to ensure that any mechanisms  
45 that are adopted by the county under this element result in a beneficial use

1 to the development, bear a reasonable relationship to the burden imposed on  
2 the county to provide additional necessary public facilities to the  
3 development and otherwise are imposed according to law.

4 E. The water resources element of the comprehensive plan does not  
5 require:

6 1. New independent hydrogeologic studies.

7 2. The county to be a water service provider.

8 F. To carry out the purposes of this article, the board may adopt  
9 overlay zoning districts and regulations applicable to particular buildings,  
10 structures and land within individual zones. For the purposes of this  
11 subsection, "overlay zoning district" means a special zoning district that  
12 includes regulations which modify regulations in another zoning district with  
13 which the overlay zoning district is combined. Overlay zoning districts and  
14 regulations shall be adopted pursuant to section 11-829. The provisions of  
15 overlay zoning shall apply retroactively to authorize overlay zoning  
16 districts and regulations adopted before April 20, 1993.

17 G. The policies and strategies to be developed under these elements  
18 shall be designed to have regional applicability.

19 H. This section does not authorize:

20 1. The imposition of dedications, exactions, fees or other  
21 requirements that are not otherwise authorized by law.

22 2. The regulation or restriction of the use or occupation of land or  
23 improvements for railroad, mining, metallurgical, grazing or general  
24 agricultural purposes, if the tract concerned is five or more contiguous  
25 commercial acres.

26 I. For the purposes of this section:

27 1. "Adult arcade" means any place to which the public is permitted or  
28 invited and in which coin-operated or slug-operated or electronically,  
29 electrically or mechanically controlled still or motion picture machines,  
30 projectors or other image producing devices are maintained to show images  
31 involving specific sexual activities or specific anatomical areas to persons  
32 in booths or viewing rooms.

33 2. "Adult bookstore or video store" means a commercial establishment  
34 that offers for sale or rent any of the following as one of its principal  
35 business purposes:

36 (a) Books, magazines, periodicals or other printed matter,  
37 photographs, films, motion pictures, videocassettes or reproductions or  
38 slides or other visual representations that depict or describe specific  
39 sexual activities or specific anatomical areas.

40 (b) Instruments, devices or paraphernalia that are designed for use in  
41 connection with specific sexual activities.

42 3. "Adult live entertainment establishment" means an establishment  
43 that features either:

44 (a) Persons who appear in a state of nudity.

1 (b) Live performances that are characterized by the exposure of  
2 specific anatomical areas or specific sexual activities.

3 4. "Adult motion picture theater" means a commercial establishment in  
4 which for any form of consideration films, motion pictures, videocassettes,  
5 slides or other similar photographic reproductions that are characterized by  
6 the depiction or description of specific sexual activities or specific  
7 anatomical areas are predominantly shown.

8 5. "Adult oriented business" means adult arcades, adult bookstores or  
9 video stores, cabarets, adult live entertainment establishments, adult motion  
10 picture theaters, adult theaters, massage establishments that offer adult  
11 service or nude model studios.

12 6. "Adult oriented business manager" means a person on the premises of  
13 an adult oriented business who is authorized to exercise overall operational  
14 control of the business.

15 7. "Adult service" means dancing, serving food or beverages, modeling,  
16 posing, wrestling, singing, reading, talking, listening or other performances  
17 or activities conducted for any consideration in an adult oriented business  
18 by a person who is nude or seminude during all or part of the time that the  
19 person is providing the service.

20 8. "Adult service provider" or "erotic entertainer" means any natural  
21 person who provides an adult service.

22 9. "Adult theater" means a theater, concert hall, auditorium or  
23 similar commercial establishment that predominantly features persons who  
24 appear in a state of nudity or who engage in live performances that are  
25 characterized by the exposure of specific anatomical areas or specific sexual  
26 activities.

27 10. "Cabaret" means an adult oriented business licensed to provide  
28 alcoholic beverages pursuant to title 4, chapter 2, article 1.

29 11. "Discernibly turgid state" means the state of being visibly  
30 swollen, bloated, inflated or distended.

31 12. "Massage establishment" means an establishment in which a person,  
32 firm, association or corporation engages in or permits massage activities,  
33 including any method of pressure on, friction against, stroking, kneading,  
34 rubbing, tapping, pounding, vibrating or stimulating of external soft parts  
35 of the body with the hands or with the aid of any mechanical apparatus or  
36 electrical apparatus or appliance. This paragraph does not apply to:

37 (a) Physicians licensed pursuant to title 32, chapter 7, 8, 13, 14  
38 or 17.

39 (b) Registered nurses, licensed practical nurses or technicians who  
40 are acting under the supervision of a physician licensed pursuant to title  
41 32, chapter 13 or 17.

42 (c) Persons who are employed or acting as trainers for a bona fide  
43 amateur, semiprofessional or professional athlete or athletic team.

44 (d) Persons who are licensed pursuant to title 32, chapter 3 or 5 if  
45 the activity is limited to the head, face or neck.

1        13. "Nude model studio" means a place in which a person who appears in  
2 a state of nudity or who displays specific anatomical areas is observed,  
3 sketched, drawn, painted, sculptured, photographed or otherwise depicted by  
4 other persons who pay money or other consideration. Nude model studio does  
5 not include a proprietary school that is licensed by this state, a college,  
6 community college or university that is supported entirely or in part by  
7 taxation, a private college or university that maintains and operates  
8 educational programs in which credits are transferable to a college,  
9 community college or university that is supported entirely or in part by  
10 taxation or a structure to which the following apply:

11        (a) A sign is not visible from the exterior of the structure and no  
12 other advertising appears indicating that a nude person is available for  
13 viewing.

14        (b) A student must enroll at least three days in advance of a class in  
15 order to participate.

16        (c) No more than one nude or seminude model is on the premises at any  
17 time.

18        14. "Nude", "nudity" or "state of nudity" means any of the following:

19        (a) The appearance of a human anus, genitals or A female breast below  
20 a point immediately above the top of the areola.

21        (b) A state of dress that fails to opaquely cover a human anus,  
22 genitals or A female breast below a point immediately above the top of the  
23 areola.

24        15. "Principal business purposes" means that a commercial establishment  
25 derives fifty per cent or more of its gross income from the sale or rental of  
26 items listed in paragraph 2 of this subsection.

27        16. "Seminude" means a state of dress in which clothing covers no more  
28 than the genitals, pubic region and female breast below a point immediately  
29 above the top of the areola, as well as portions of the body that are covered  
30 by supporting straps or devices.

31        17. "Specific anatomical areas" means any of the following:

32        (a) A human anus, genitals, THE pubic region or a female breast below  
33 a point immediately above the top of the areola that is less than completely  
34 and opaquely covered.

35        (b) Male genitals in a discernibly turgid state even if completely and  
36 opaquely covered.

37        18. "Specific sexual activities" means any of the following:

38        (a) Human genitals in a state of sexual stimulation or arousal.

39        (b) Sex acts, normal or perverted, actual or simulated, including acts  
40 of human masturbation, sexual intercourse, oral copulation or sodomy.

41        (c) Fondling or other erotic touching of the human genitals, pubic  
42 region, buttocks, anus or female breast.

43        (d) Excretory functions as part of or in connection with any of the  
44 activities under subdivision (a), (b) or (c) of this paragraph.

1       Sec. 3. Section 32-2181.02, Arizona Revised Statutes, is amended to  
2 read:

3       32-2181.02. Exempt sales and leases

4       A. The following are exempt under this article:

5       1. The sale or lease in bulk of six or more lots, parcels or  
6 fractional interests to one buyer in one transaction.

7       2. The sale or lease of lots or parcels of one hundred sixty acres or  
8 more.

9       B. The following are exempt from section 32-2181, subsection A and  
10 section 32-2183, subsection A:

11       1. The sale or lease of parcels, lots, units or spaces that are zoned  
12 and restricted to commercial or industrial uses.

13       2. The sale or lease of lots or parcels located in a single platted  
14 subdivision by a subdivider if:

15       (a) A public report has been issued within the past two years pursuant  
16 to this article on the subdivision lots or parcels.

17       (b) The subdivision meets all current requirements otherwise required  
18 of a subdivision under this article.

19       (c) The method of sale or lease of lots or parcels meets all current  
20 requirements under this article.

21       (d) The lots or parcels are included on a recorded subdivision plat  
22 that is approved by a municipal or county government.

23       (e) All roads within the subdivision, all utilities to the lots or  
24 parcels being offered for sale or lease and all other required improvements  
25 within the subdivision, other than a residence to be built, are complete,  
26 paid for and free of any blanket encumbrances.

27       (f) The roads, utilities or other improvements are not complete, but  
28 the completion of all improvements is assured pursuant to section 32-2183,  
29 subsection D.

30       (g) Except for matters relating to ownership, there have been no  
31 material changes to the information set forth in the most recent public  
32 report issued for the subdivision lots that would require an amendment to the  
33 public report.

34       (h) No owner of a ten per cent or greater interest, subdivider,  
35 director, partner, agent, officer or developer of the subdivision has:

36       (i) Been convicted of a felony or any crime involving theft,  
37 dishonesty, violence against another person, fraud or real estate, regardless  
38 of whether the convictions were subsequently expunged.

39       (ii) Had a civil judgment entered against the person in a case  
40 involving allegations of misrepresentation, fraud, breach of fiduciary duty,  
41 misappropriation, dishonesty or, if the subject matter involved real  
42 property, securities or investments.

43       (iii) Had a business or professional license, including a real estate  
44 license, denied, suspended or revoked or voluntarily surrendered a business  
45 or professional license during the course of an investigative or disciplinary

1 proceeding or other disciplinary action taken in this state or any other  
2 state.

3 (i) The sale of the subdivided lands violates no laws or ordinances of  
4 any governmental authority.

5 (j) Before the buyer's or lessee's execution of a purchase contract or  
6 lease, the subdivider has provided the buyer or lessee with a copy of the  
7 most recent public report on the lot and has taken a receipt from the buyer  
8 for the copy.

9 (k) The subdivider has provided to the buyer or lessee, along with the  
10 public report, a signed statement that the subdivider has reviewed and is in  
11 compliance with the terms of the exemption provided in this paragraph.

12 (l) Before sale or lease, the subdivider has notified the  
13 commissioner, on a form provided by the department, of the subdivider's  
14 intent to sell or lease lots or parcels pursuant to this paragraph. The  
15 notice shall include:

16 (i) The name, address and telephone number of the subdivider.

17 (ii) The name, address and telephone number of any real estate broker  
18 retained by the subdivider to make sales or leases of the lots.

19 (iii) The name and location of the subdivision.

20 (iv) The most recent subdivision public report reference number on the  
21 lots.

22 (v) The completion status of subdivision improvements.

23 3. The conveyance to a person who previously conveyed the lot to a  
24 home builder for the purpose of constructing a dwelling for the person.

25 4. The sale or lease by a person of individual lots or parcels that  
26 were separately acquired by the person from different persons and that were  
27 not acquired for the purpose of development if:

28 (a) The lots or parcels are not located in a platted subdivision.

29 (b) Each lot or parcel bears the same legal description that it bore  
30 when the lot or parcel was acquired by the person.

31 (c) The seller or lessor is in compliance with all other applicable  
32 state and local government requirements.

33 5. The sale of an improved lot in a subdivision that is located  
34 outside of this state if:

35 (a) The subdivision is located within the United States and the sale  
36 is exempt from the provisions of the interstate land sales full disclosure  
37 act (P.L. 90-448; 82 Stat. 590; 15 United States Code sections 1701 through  
38 1720).

39 (b) The subdivider is required by the state where the subdivision is  
40 located to deliver a public report or equivalent disclosure document to  
41 prospective purchasers and the subdivider delivers the report or equivalent  
42 disclosure document.

43 6. The sale of an improved lot in a subdivision located in this state  
44 where five or more sales were previously made by the seller if:

1 (a) The sale is the seller's first or second sale in the subdivision  
2 within the previous twelve month period.

3 (b) The subdivision is located within the corporate limits of a town  
4 or city.

5 (c) Electricity and telephone service are complete and available to  
6 the improved lot.

7 (d) Water and sewage service is complete and available to the improved  
8 lot.

9 (e) Streets and roads located outside of the subdivision provide  
10 permanent access to the subdivision and are complete and maintained by the  
11 county, town or city, or by a legally created and operational property  
12 owners' association.

13 (f) Streets within the subdivision are dedicated, provide permanent  
14 access to the lot, are complete to town or city standards and are maintained  
15 by the town or city or, in the case of private streets, a legally created and  
16 operational property owners' association accepts the responsibility of  
17 perpetual maintenance.

18 (g) All subdivision common area improvements, including landscaping,  
19 recreational facilities and other jointly used and maintained improvements,  
20 are complete and maintained by a legally created and operational property  
21 owners' association.

22 (h) The purchaser's down payment, earnest money, deposit or other  
23 advanced money is placed and held in a neutral escrow depository in this  
24 state until escrow closes and the deed is delivered to the purchaser.

25 (i) Within the previous twelve months the seller has not had an  
26 ownership interest in more than two lots in the subdivision, including an  
27 interest by option, an agreement for sale, a beneficial interest under a  
28 trust or a purchase contract.

29 C. Nothing in this section shall be construed to increase, decrease or  
30 otherwise affect any rights or powers granted the commissioner under this  
31 chapter.

32 D. ~~The provisions of~~ This section ~~do~~ DOES not apply to lands on which  
33 the commissioner has issued orders pursuant to sections 32-2154 and 32-2157  
34 and section 32-2183, subsection ~~I~~ J unless the commissioner has issued a  
35 public report on those lands subsequent to the date of the orders.

36 E. Nothing in this section shall be construed to increase, to decrease  
37 or to otherwise affect any rights or powers granted to political subdivisions  
38 of this state with respect to their jurisdictions.

39 Sec. 4. Section 32-2183, Arizona Revised Statutes, is amended to read:

40 32-2183. Subdivision public reports; denial of issuance;  
41 unlawful sales; voidable sale or lease; order  
42 prohibiting sale or lease; investigations; hearings;  
43 summary orders

44 A. Upon examination of a subdivision, the commissioner, unless there  
45 are grounds for denial, shall issue to the subdivider a public report

1 authorizing the sale or lease in this state of the lots, parcels or  
2 fractional interests within the subdivision. The report shall contain the  
3 data obtained in accordance with section 32-2181 and any other information  
4 which the commissioner determines is necessary to implement the purposes of  
5 this article. If any of the lots, parcels or fractional interests within the  
6 subdivision are located within territory in the vicinity of a military  
7 airport or ancillary military facility as defined in section 28-8461 or under  
8 a military training route as delineated in the military training route map  
9 prepared pursuant to section 37-102, the report shall include, in bold twelve  
10 point font block letters on the first page of the report, the statements  
11 required pursuant to section 28-8484, subsection A or section 32-2183.05 and,  
12 if the department has been provided a map prepared pursuant to section  
13 28-8484, subsection B or section 37-102, the report shall include a copy of  
14 the map. The military airport report requirements do not require the  
15 amendment or reissuance of any public report issued on or before December 31,  
16 2001 or on or before December 31 of the year in which the lots, parcels or  
17 fractional interests within a subdivision become territory in the vicinity of  
18 a military airport or ancillary military facility. The military training  
19 route report requirements do not require the amendment or reissuance of any  
20 public report issued on or before December 31, 2004. The commissioner shall  
21 require the subdivider to reproduce the report, make the report available to  
22 each prospective customer and furnish each buyer or lessee with a copy before  
23 the buyer or lessee signs any offer to purchase or lease, taking a receipt  
24 therefor.

25 B. Notwithstanding subsection A of this section, a subdivider may  
26 elect to prepare a final public report for use in the sale of improved lots  
27 as defined in section 32-2101, as follows:

28 1. The subdivider shall prepare the public report and provide a copy  
29 of the report to the commissioner with the submission of the notification  
30 required by sections 32-2181 and 32-2184 and shall comply with all other  
31 requirements of this article.

32 2. An initial filing fee of five hundred dollars or an amended filing  
33 fee of two hundred fifty dollars shall accompany the notification required by  
34 paragraph 1 of this subsection.

35 3. The department shall assign a registration number to each  
36 notification and public report submitted pursuant to this subsection and  
37 shall maintain a database of all of these submissions. The subdivider shall  
38 place the number on each public report.

39 4. The department shall determine within fifteen business days after  
40 the receipt of the notification and public report whether the notification  
41 and public report are administratively complete. The commissioner either may  
42 issue a certification that the notification and public report are  
43 administratively complete or may deny issuance of the certification if it  
44 appears that the application or project is not in compliance with all legal  
45 requirements, that the applicant has a background of violations of state or



1 federal law or that the applicant or project presents an unnecessary risk of  
2 harm to the public.

3 5. A subdivider may commence sales or leasing activities as permitted  
4 under this article after obtaining a certificate of administrative  
5 completeness from the commissioner.

6 6. Before or after the commissioner issues a certificate of  
7 administrative completeness, the department may examine any public report,  
8 subdivision or applicant that has applied for or received the certificate.  
9 If the commissioner determines that the subdivider or subdivision is not in  
10 compliance with any requirement of state law or that grounds exist under this  
11 chapter to suspend, deny or revoke a public report, the commissioner may  
12 commence an administrative action under section 32-2154 or 32-2157. If the  
13 subdivider immediately corrects the deficiency and comes into full compliance  
14 with state law, the commissioner shall vacate any action that the  
15 commissioner may have commenced pursuant to section 32-2154 or 32-2157.

16 7. The department shall provide forms and guidelines for the  
17 submission of the notification and public report pursuant to this section.

18 C. The commissioner may suspend, revoke or deny issuance of a public  
19 report on any of the following grounds:

20 1. Failure to comply with this article or the rules of the  
21 commissioner pertaining to this article.

22 2. The sale or lease would constitute misrepresentation to or deceit  
23 or fraud of the purchasers or lessees.

24 3. Inability to deliver title or other interest contracted for.

25 4. Inability to demonstrate that adequate financial or other  
26 arrangements acceptable to the commissioner have been made for completion of  
27 all streets, sewers, electric, gas and water utilities, drainage and flood  
28 control facilities, community and recreational facilities and other  
29 improvements included in the offering.

30 5. Failure to make a showing that the lots, parcels or fractional  
31 interests can be used for the purpose for which they are offered.

32 6. The owner, agent, subdivider, officer, director or partner,  
33 subdivider trust beneficiary holding ten per cent or more direct or indirect  
34 beneficial interest or, if a corporation, any stockholder owning ten per cent  
35 or more of the stock in the corporation has:

36 (a) Been convicted of a felony or misdemeanor involving fraud or  
37 dishonesty or involving conduct of any business or a transaction in real  
38 estate, cemetery property, time-share intervals or membership camping  
39 campgrounds or contracts.

40 (b) Been permanently or temporarily enjoined by order, judgment or  
41 decree from engaging in or continuing any conduct or practice in connection  
42 with the sale or purchase of real estate or cemetery property, time-share  
43 intervals, membership camping contracts or campgrounds, or securities or  
44 involving consumer fraud or the racketeering laws of this state.

1 (c) Had an administrative order entered against him by a real estate  
2 regulatory agency or security regulatory agency.

3 (d) Had an adverse decision or judgment entered against him involving  
4 fraud or dishonesty or involving the conduct of any business or transaction  
5 in real estate, cemetery property, time-share intervals or membership camping  
6 campgrounds or contracts.

7 (e) Disregarded or violated this chapter or the rules of the  
8 commissioner pertaining to this chapter.

9 (f) Controlled an entity to which subdivision (b), (c), (d) or (e)  
10 applies.

11 7. Procurement or an attempt to procure a public report by fraud,  
12 misrepresentation or deceit or by filing an application for a public report  
13 that is materially false or misleading.

14 8. Failure of the declaration for a condominium created pursuant to  
15 title 33, chapter 9, article 2 to comply with the requirements of section  
16 33-1215 or failure of the plat for the condominium to comply with the  
17 requirements of section 33-1219. The commissioner may require an applicant  
18 for a public report to submit a notarized statement signed by the subdivider  
19 or an engineer or attorney licensed to practice in this state certifying that  
20 the condominium plat and declaration of condominium are in compliance with  
21 the requirements of sections 33-1215 and 33-1219. If the notarized statement  
22 is provided, the commissioner is entitled to rely on this statement.

23 9. Failure of any blanket encumbrance or valid supplementary agreement  
24 executed by the holder of the blanket encumbrance to contain provisions that  
25 enable the purchaser to acquire title to a lot or parcel free of the lien of  
26 the blanket encumbrance, on completion of all payments and performance of all  
27 of the terms and provisions required to be made or performed by the purchaser  
28 under the real estate sales contract by which the purchaser has acquired the  
29 lot or parcel. The subdivider shall file copies of documents acceptable to  
30 the commissioner containing these provisions with the commissioner before the  
31 sale of any subdivision lot or parcel subject to a blanket encumbrance.

32 10. Failure to demonstrate permanent access to the subdivision lots or  
33 parcels.

34 11. The use of the lots presents an unreasonable health risk.

35 D. It is unlawful for a subdivider to sell any lot in a subdivision  
36 unless one of the following occurs:

37 1. All proposed or promised subdivision improvements are completed.

38 2. The completion of all proposed or promised subdivision improvements  
39 is assured by financial arrangements acceptable to the commissioner. The  
40 financial arrangements may be made in phases for common community and  
41 recreation facilities required by a municipality or county as a stipulation  
42 for approval of a plan for a master planned community.

43 3. The municipal or county government agrees to prohibit occupancy and  
44 the subdivider agrees not to close escrow for lots in the subdivision until  
45 all proposed or promised subdivision improvements are completed.

1           4. The municipal or county government enters into an assurance  
2 agreement with any trustee not to convey lots until improvements are  
3 completed within the portion of the subdivision containing these lots, if the  
4 improvements can be used and maintained separately from the improvements  
5 required for the entire subdivision plat. The agreement shall be recorded in  
6 the county in which the subdivision is located.

7           ~~E.~~ THE PUBLIC REPORT SHALL DISCLOSE ALL RIGHTS-OF-WAY, EASEMENTS AND  
8 CORRIDORS FOR LOCAL UTILITIES AND PUBLIC UTILITIES WITHIN OR ADJACENT TO THE  
9 SUBDIVISION, AS SHOWN IN THE GENERAL PLAN OR COMPREHENSIVE PLAN OF THE CITY,  
10 TOWN OR COUNTY IN WHICH THE SUBDIVISION IS LOCATED. THIS SUBSECTION DOES NOT  
11 APPLY WITH RESPECT TO ANY CHANGES TO THE REPORT REQUIRED BY AN AMENDMENT OR  
12 READOPTION OF A GENERAL OR COMPREHENSIVE PLAN FOR ONE HUNDRED TWENTY DAYS  
13 AFTER THE AMENDMENT OR READOPTION BECOMES EFFECTIVE.

14           ~~F.~~ F. If the subdivision is within a groundwater active management  
15 area, as defined in section 45-402, the commissioner shall deny issuance of a  
16 public report or the use of any exemption pursuant to section 32-2181.02,  
17 subsection B unless the subdivider has been issued a certificate of assured  
18 water supply by the director of water resources and has paid all applicable  
19 fees pursuant to sections 48-3772 and 48-3774.01, or unless the subdivider  
20 has obtained a written commitment of water service for the subdivision from a  
21 city, town or private water company designated as having an assured water  
22 supply by the director of water resources pursuant to section 45-576 or is  
23 exempt from the requirement pursuant to section 45-576.

24           ~~F.~~ G. A subdivider shall not sell or lease or offer for sale or lease  
25 in this state any lots, parcels or fractional interests in a subdivision  
26 without first obtaining a public report from the commissioner except as  
27 provided in section 32-2181.01 or 32-2181.02. Unless exempt, the sale or  
28 lease of subdivided lands prior to issuance of the public report or failure  
29 to deliver the public report to the purchaser or lessee shall render the sale  
30 or lease rescindable by the purchaser or lessee. An action by the purchaser  
31 or lessee to rescind the transaction shall be brought within three years of  
32 the date of execution of the purchase or lease agreement by the purchaser or  
33 lessee. In any rescission action, the prevailing party is entitled to  
34 reasonable attorney fees as determined by the court.

35           ~~G.~~ H. Any applicant objecting to the denial of a public report,  
36 within thirty days after receipt of the order of denial, may file a written  
37 request for a hearing. The commissioner shall hold the hearing within twenty  
38 days after receipt of the request for a hearing unless the party requesting  
39 the hearing has requested a postponement. If the hearing is not held within  
40 twenty days after a request for a hearing is received, plus the period of any  
41 postponement, or if a proposed decision is not rendered within forty-five  
42 days after submission, the order of denial shall be rescinded and a public  
43 report issued.

44           ~~H.~~ I. On the commissioner's own motion, or when the commissioner has  
45 received a complaint and has satisfactory evidence that the subdivider or the

1 subdivider's agent is violating this article or the rules of the commissioner  
2 or has engaged in any unlawful practice as defined in section 44-1522 with  
3 respect to the sale of subdivided lands or deviated from the provisions of  
4 the public report, the commissioner may investigate the subdivision project  
5 and examine the books and records of the subdivider. For the purpose of  
6 examination, the subdivider shall keep and maintain records of all sales  
7 transactions and funds received by the subdivider pursuant to the sales  
8 transactions and shall make them accessible to the commissioner upon  
9 reasonable notice and demand.

10 ~~I.~~ J. On the commissioner's own motion, or when the commissioner has  
11 received a complaint and has satisfactory evidence that any person has  
12 violated this article or the rules of the commissioner or has engaged in any  
13 unlawful practice as defined in section 44-1522 with respect to the sale of  
14 subdivided lands or deviated from the provisions of the public report or  
15 special order of exemption, or has been indicted for fraud or against whom an  
16 information for fraud has been filed or has been convicted of a felony,  
17 before or after the commissioner issues the public report as provided in  
18 subsection A of this section, the commissioner may conduct an investigation  
19 of the matter, issue a summary order as provided in section 32-2157, or hold  
20 a public hearing and, after the hearing, may issue the order or orders the  
21 commissioner deems necessary to protect the public interest and ensure  
22 compliance with the law, rules or public report or the commissioner may bring  
23 action in any court of competent jurisdiction against the person to enjoin  
24 the person from continuing the violation or engaging in or doing any act or  
25 acts in furtherance of the violation. The court may make orders or  
26 judgments, including the appointment of a receiver, necessary to prevent the  
27 use or employment by a person of any unlawful practices, or which may be  
28 necessary to restore to any person in interest any monies or property, real  
29 or personal, that may have been acquired by means of any practice in this  
30 article declared to be unlawful.

31 ~~J.~~ K. When it appears to the commissioner that a person has engaged  
32 in or is engaging in a practice declared to be unlawful by this article and  
33 that the person is concealing assets or self or has made arrangements to  
34 conceal assets or is about to leave the state, the commissioner may apply to  
35 the superior court, ex parte, for an order appointing a receiver of the  
36 assets of the person or for a writ of ne exeat, or both.

37 ~~K.~~ L. The court, on receipt of an application for the appointment of  
38 a receiver or for a writ of ne exeat, or both, shall examine the verified  
39 application of the commissioner and other evidence that the commissioner may  
40 present the court. If satisfied that the interests of the public require the  
41 appointment of a receiver or the issuance of a writ of ne exeat without  
42 notice, the court shall issue an order appointing the receiver or issue the  
43 writ, or both. If the court determines that the interests of the public will  
44 not be harmed by the giving of notice, the court shall set a time for a  
45 hearing and require notice be given as the court deems satisfactory.

1        ~~L.~~ M. If the court appoints a receiver without notice, the court  
2 shall further direct that a copy of the order appointing a receiver be served  
3 on the person engaged in or engaging in a practice declared to be unlawful  
4 under this article by delivering the order to the last address of the person  
5 that is on file with the state real estate department. The order shall  
6 inform the person that the person has the right to request a hearing within  
7 ten days of the date of the order and, if requested, the hearing shall be  
8 held within thirty days from the date of the order.

9        Sec. 5. Amendment of general and comprehensive plans

10        On or before December 31, 2008, the governing body of each city, town  
11 and county shall amend its general plan or comprehensive plan as necessary to  
12 comply with the requirements of the public utilities element as prescribed by  
13 sections 9-461.05 and 11-821, Arizona Revised Statutes, as amended by this  
14 act. An amendment of the general plan or comprehensive plan for this purpose  
15 is not considered to be a major amendment for purposes of the adoption  
16 process.